



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
P.O. BOX 59
LOUISVILLE, KENTUCKY 40201-0059

REPLY TO
ATTENTION OF:

CELRL-OPF

MEMORANDUM FOR FILE, ID No. LRL-2013-635-gjd

SUBJECT: Decision Memorandum: Consideration of Preparation of an Environmental Impact Statement in connection with the Department of Army (DA) Permit Application, Seven Hills Mine, Millersburg, Warrick County, Indiana, Project Number LRL-2013-635-gjd

1. **PROJECT DESCRIPTION AND DISCUSSION:** The project proponent, United Minerals Company, LLC. (UMC) submitted an application to the U.S. Army Corps of Engineers, Louisville District (USACE) to discharge dredged and/or fill material into "waters of the United States (U.S.)", an activity subject to Section 404 of the Clean Water Act in January 2016. The proposed discharges would occur in conjunction with the construction of the Seven Hills Mine, a proposed surface coal mine project. Evaluation of the Section 404 permit application is a federal action subject to review under the National Environmental Policy Act of 1969 (NEPA). The project is located on Pigeon Creek, unnamed tributaries of Pigeon Creek, adjacent wetlands to Pigeon Creek, and open waters, located northwest of Boonville, Warrick County, Indiana. The project is located at and near Latitude: 38.11821 and Longitude: -87.40361; and on the USGS 7.5 Minute Quad Maps for Daylight and Elberfeld, Indiana.

The purpose of the project is to facilitate the removal of subsurface coal materials and to construct attendant features to support the extraction, preparation, and transportation of the coal to market.

The Seven Hills Mine is a proposed surface coal mine project which would result in discharges of fill and/or dredged material into "waters of the U.S." over an 1,679.6 acre site. The proposed project has been issued a Surface Mining Control and Reclamation Act (SMCRA) Permit, No. S-357. The proposed project includes areas that have been impacted by past mining activities between 1973 and 1996. Of the 1,679.6 acre site, 648.5 acres have been previously mined.

Under the current proposal, the applicant is proposing to impact the following: 8,427 linear feet of ephemeral streams; 45,213 linear feet of intermittent streams; 200 linear feet of perennial stream; 462.18 acres of palustrine forested (PFO) wetlands, 27.13 of palustrine emergent (PEM) wetlands, 19.81 acres of palustrine scrub-shrub (PSS) wetlands, 1.04 palustrine unconsolidated bottom (PUBG) wetlands, and 72.85 acres of open waters.

The impacts would be associated with coal extraction (493.91 acres of wetland and 51,774 feet of stream impacts), construction of sediment basins (0.35 acres of wetland and 1,160 feet of stream impacts), construction of haulage roads (6.53 acres of wetland and 706 feet of stream impacts), floodway excavation (9.37 acres of wetland impacts), and stream crossings (200' of stream impacts).

As part of this proposal, the applicant is proposing to construct 4 levees, at heights of 5', 4', 3', and 4' for lengths of 3,800', 4,000', 6,300', and 4,800', respectively, on the west side of Pigeon

SUBJECT: Decision Memorandum: Consideration of Preparation of an Environmental Impact Statement in connection with the Department of Army (DA) Permit Application, Seven Hills Mine, Millersburg, Warrick County, Indiana, Project Number LRL-2013-635-gjd

Creek. These levees would separate the majority of the proposed avoidance areas on the west side of Pigeon Creek and the mining area to facilitate the mining operation. The levees would prevent the inundation of the mining area while it is in operation. With the operation of the levee system, the applicant is proposing to complete floodway excavation on the east side of Pigeon Creek to mitigate the loss of flood storage resulting from the levee operations. The floodway excavation would expand two existing open water structures that are the result of past mining. The excavation would impact 9.37 acres of wetlands as described above.

The applicant is also seeking authorization to construct a bridge crossing and conveyor crossing over Pigeon Creek. The bridge crossing would be a 45' wide by 80' long single span precast deck beam bridge. The stream banks immediately adjacent to and within the footprint of the bridge structure would be stabilized with concrete and/or riprap. The applicant is also seeking authorization to construct a conveyor system that would include a 100' span over Pigeon Creek.

All economically recoverable coal is proposed to be removed during the excavation of the area, processed and sold. Upon completion of the mining, the area would be returned to approximate original contours, covered with stockpiled soil material, re-vegetated, and returned to an approved post-mine land use through the SMCRA process.

During early coordination for the proposed project, the project was initially presented to the Corps by United Minerals, Inc. (UMI). Later in the process the project was taken over and formally submitted by UMC. From the initial discussion, dating back to August 2007, representatives of UMI, UMC, and Peabody Energy, the parent company, were advised that the proposed project would require a Section 404 DA permit. Discussions continued from the early coordination and have been ongoing since, with some periods of extended inactivity as the applicant completed studies and designs. In January 2016, UMC submitted their final revised application. The Public Notice for the proposed project was issued on March 17, 2016, with a 30 day comment period. In response to the Public Notice, one hundred two (102) requests from the general public and two (2) requests from environmental groups were received requesting a 30-day extension of time in which to provide comments on the proposed project. The extension of the Public Notice comment period was granted and extended until May 18, 2016. This extension of the comment period was granted to provide an adequate amount of time for the commenters to review the applicant's submittal and an opportunity to provide substantive comments. At the close of the extended comment period, comments had been received from three state resource agencies (Indiana Department of Natural Resources (IDNR) – Division of Reclamation (DOR), IDNR – Division of Fish and Wildlife (DFW), and IDNR – Division of Historic Properties and Archeology (DHPA)), two federal agencies, (United States Environmental Protection Agency (USEPA) and United States Fish and Wildlife Service (USFWS)), one federally recognized tribe (Miami Tribe of Oklahoma), two environmental groups, (Valley Watch and Sierra Club), and one thousand sixty one (1,061) individuals (mostly through the use of petitions and/or form letters). Many of these responses (957) were provided through the applicant in the form of 922

SUBJECT: Decision Memorandum: Consideration of Preparation of an Environmental Impact Statement in connection with the Department of Army (DA) Permit Application, Seven Hills Mine, Millersburg, Warrick County, Indiana, Project Number LRL-2013-635-gjd

signatures on petitions and 35 form letters voicing support for the proposed project primarily by citing the proposed mitigation to offset the proposed impacts and the value of high paying jobs. Many of the remaining letters from the resource agencies, environmental groups and 104 individuals (many form letters) voiced opposition to the proposed project expressing concerns over the potential adverse impacts to the aquatic resources and overall public safety and health as a result of the proposed project. Most of the opposing commenters also requested a Public Hearing to more fully understand the project and to better present their concerns regarding the project.

The USFWS and the USEPA both initiated the elevation procedures of Section 404(q) of the Clean water Act process as described in the "Memorandum Of Agreement Between The Department Of The Interior and The Department Of The Army," dated December 21, 1992 and the "Memorandum Of Agreement Between The Environmental Protection Agency and The Department Of The Army," dated August 11, 1992. In their letters, the USFWS and the USEPA commented that proposed project *will* result in substantial and unacceptable impacts to aquatic resources of national importance (ARNI). Within the proposed project area, they identified Pigeon Creek and its' floodplains as ARNI's.

2. DECISION: After careful consideration of the information received to date on the proposed Seven Hills Mine Coal Mine and an evaluation of 33 CFR Part 325 Appendix B, and the Council on Environmental Quality Executive Office of the President, NEPA regulations, 40 CFR 1500-1508, I believe that an EIS should be prepared for several reasons including:

a. The proposed project would result in adverse aquatic resource impacts to 53,660 linear feet of streams, 510.16 acres of wetlands and 72.85 acres of open water. The aquatic resources located within the proposed project area are of variable quality. These on-site resources provide beneficial contributions to the overall watershed's functions and values. These resources affect the watershed in several ways including, water quality, nutrient cycling, storm water retention, and wildlife habitat. The wetlands and floodplains within the project area constitute productive and valuable public resources which serve significant natural biological functions, including flood control, water quality, food chain production, general habitat, and nesting, spawning, rearing and resting habitat for aquatic and land species.


b. The USEPA, USFWS, and the Sierra Club requested that the USACE require an EIS for the project pursuant to NEPA because of the likely adverse environmental impacts associated with the proposed project. These adverse impacts identified by the commenters include: Cumulative and secondary impacts resulting in significant degradation of Pigeon Creek; Direct impacts to an identified ARNI; Presence of federally and state listed species known to occur in the area of the proposed project; and, Inadequate mitigation. Issues involving other practicable alternatives, environmental justice, as well as, public health and safety concerns were also raised.

SUBJECT: Decision Memorandum: Consideration of Preparation of an Environmental Impact Statement in connection with the Department of Army (DA) Permit Application, Seven Hills Mine, Millersburg, Warrick County, Indiana, Project Number LRL-2013-635-gjd

c. Concern over cumulative impacts to “waters of the U.S.” associated with coal mining in the Pigeon Creek watershed. The proposed project is located within the Highland-Pigeon 8-digit watershed (05140202), which is a tributary to the Ohio River. The permit area is drained by one smaller, 12-digit watershed, Clear Branch-Pigeon Creek (051402020203). The Highland-Pigeon Watershed encompasses 235,520 acres. The Clear Branch – Pigeon Creek watershed encompasses 22,960 acres. In the Clear Branch-Pigeon Creek watershed, approximately 48% of the watershed has been previously affected by surface mining. It is also estimated that 49% of the watershed is currently in agricultural land use. If approved, the area within the watershed directly affected by mining would be about 55% of the surface area of the watershed with approximately 7.6% of the watershed directly impacted by the Seven Hills Project. Based on known coal reserves, and depending on developing technology and economic factors, another 18% of the watershed could be potentially mined in the future.

The applicant has identified the 289.58 acres of wetlands and 13,515 linear feet of streams that would be avoided from direct impacts during the mining operation. However, secondary impacts to several of these resources, especially those located on the west side of Pigeon Creek and the east side of the proposed levees would likely occur, including, but not limited to, increases in the frequency and intensity of flooding, and retention time of inundating waters, and with that the likely loss of tree biomass.

Based on these factors, I have determined that this project/permit action constitutes a major federal action that has the potential to significantly affect the quality of the human environment, requiring the preparation of an EIS. In accordance with Regulatory Guidance Letter 05-08, dated 7 December 2005 and *Guidance on Environmental Impact Statement Preparation, Corps Regulatory Program* dated 17 December 1997, the Corps is required to prepare an EIS on a permit action through the use of a third party contractor paid by the applicant, but who is selected and supervised by the Corps.


CHRISTOPHER G. BECK
Colonel, Corps of Engineers
District Commander